

BL O/824/22

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATION NUMBER 3645303
BY DCT83 TECH LTD
TO REGISTER THE TRADE MARK:**

HELLOCHERRY

IN CLASSES 9, 35, 38, 41, 42 and 45

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NUMBER 426874
BY CHERRY GMBH**

Background and Pleadings

1. On 21 May 2021, DCT83 Tech Ltd (“the applicant”) applied to register in the UK the trade mark shown on the cover page of this decision, under number 3645303 (“the contested mark”). The contested mark was published in the Trade Marks Journal for opposition purposes on 23 July 2021, in respect of goods and services in Classes 9, 35, 38, 41, 42 and 45.

2. On 14 September 2021, Cherry GmbH (“the opponent”) filed a notice of opposition. The opposition is brought under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The Section 5(2)(b) ground is directed at all the goods and services in the application.¹

3. The opponent relies upon its UK trade mark number 3382232, ‘CHERRY’ (“the earlier mark”). The earlier mark was filed on 11 March 2019 and became registered on 31 May 2019, in respect of goods in Class 9.²

4. In its notice of opposition, the opponent essentially argues that the marks at issue are highly similar and that the respective goods and services are identical and/or similar, resulting in a significant risk of a likelihood of confusion.

5. The applicant filed a counterstatement denying the grounds for opposition, stating that the marks at issue are not sufficiently similar and that the respective goods and services are dissimilar.

6. Given the respective filing dates, the opponent’s mark is an earlier mark, in accordance with section 6 of the Act. However, as it had not been registered for five years or more at the filing date of the application, it is not subject to the proof of use requirements specified within section 6A of the Act. As a consequence, the opponent may rely upon all of the goods for which the earlier mark is registered without having to establish genuine use.

¹ These will be listed in the goods and services comparison.

² These will be listed in the goods and services comparison.

7. Neither party filed evidence. The opponent is professionally represented by Wilson Gunn; the applicant is professionally represented by Trade Mark Wizards Limited. Both parties were given the option of an oral hearing but neither requested to be heard on this matter, nor did they file written submissions in lieu. This decision is taken following a careful review of the papers before me, keeping all submissions in mind.

8. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. That is why this decision continues to refer to EU trade mark case law.

Decision

Section 5(2)(b): Legislation and case law

9. Sections 5(2)(b) and 5A of the Act read as follows:

“5(2) A trade mark shall not be registered if because-

[...]

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

[...]

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which

the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

10. I am guided by the following principles which are gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro- Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

11. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the "Nice Classification" means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975."

12. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.* where the CJEU stated at paragraph 23 of its judgment:

"In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary."

13. In *Kurt Hesse v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case C-50/15 P, the CJEU stated that complementarity is capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court ("GC") stated that "complementary" means:

"82 ... there is a close connection between [the goods], in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking...".

14. Additionally, the criteria identified in *British Sugar Plc v James Robertson & Sons Limited* ("*Treat*") [1996] R.P.C. 281 for assessing similarity between goods and services also include an assessment of the channels of trade of the respective goods or services.

15. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch) at [12] Floyd J said:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

16. In *Gérard Meric v Office for Harmonisation in the Internal Market ('Merici')*, the GC stated that:

"29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (*Case T-388/00 Institut fur Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark".

17. For the purposes of considering the issue of similarity of goods or services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons (see *Separode Trade Mark* (BL O/399/10), Mr Geoffrey Hobbs QC, sitting as the Appointed Person, and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

18. The competing goods and services are as follows:

Opponent's goods

Class 9 Switches; electromechanical and electrical switches, namely, snap-action switches, gp series switches, selector switches, key switches, thumbwheel switches, rocker switches and automotive hidden switches; sensors; electric or electronic sensors, namely magnetic proximity sensors, speed sensors and direction sensors, electric or electronic automotive sensor controls, namely seat and console controls, door latch and lock controls, steering wheel and instrument panel controls, seat belt sensor controls, air bag deployment sensor controls and angular position sensors; computers; computer input devices, namely multimedia computer keyboards, computer mice, point of sale keyboards including magnetic card readers, biometric security readers, smart card readers.

Applicant's goods and services

Class 9 Apparatus, instruments and devices for collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, projects; apparatus, instruments and devices for collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, in relation to social networking; computer software; computer software for use in collecting, compiling, storing, registering, creating, managing, summarising, sharing,

supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, in relation to social networking; computer hardware; computer hardware for use in collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, projects in relation to social networking; computer software relating to database management software, downloadable databases, computer programs, mobile applications, computer software and internet platforms; computer software relating to social networking; downloadable mobile applications; downloadable mobile applications in relation to social networking; downloadable electronic publications; downloadable publications relating to social networking; downloadable and electronic publications; downloadable and electronic publications in the nature of manuals in relation to social networking.

Class 35 Advertising, promotion, and marketing services; advertising in relation to social networking; providing business information; providing business information in the form of databases, files, property registers, product registers; providing business information in relation to the state of assets, sector; advisory services for business management; advisory services relating to business management and business operations; advisory services relating to business risk management; advisory services relating to commercial transactions; analysis of advertising response; analysis of advertising response and market research; analysis of business data; analysis of business information; analysis of business management systems; analysis of business statistics; analysis of business trends; analysis of

company attitudes; analysis of company behaviour; analysis of market research data; analysis of market research data and statistics; analysis of market research statistics; analysis of marketing trends; analysis of markets; analysis of the public awareness of advertising; analysis relating to marketing; business analysis; business analysis and information services, and market research; business analysis of markets; business analysis services; business consultancy services; business consultancy services relating to data processing; business consultancy to individuals; business consultation services; business consulting services; business data analysis; business data analysis services; business efficiency expert services; business information; business information agency services; business information and inquiries; business information and research services; compilation of business information; business information for enterprises; provision of business information for enterprises; provision of business information; business information services; business information services provided online from a computer database or internet; businesses information services provided on-line from a computer database or the internet; business information services provided online from a global computer network or the internet; business intelligence services; business management analysis; collating of data in computer databases; collecting business information; collecting business statistics; collecting information for business; collection of commercial information; collection of data; collection of information relating to advertising; collection of information relating to market analysis; collection of information relating to market research; collection of information relating to market studies; collection of market research information; collection of personnel information; collection of statistics for business; compilation of statistical information; compilation of statistical models for the provision of market dynamics information; compilation of statistics; compiling of information into computer databases; compiling of statistics; consultancy relating to business analysis; data collection [for others]; data collection services; data compilation for others; data file administration; data inputting services; data management; data management services; data processing; data processing for businesses; data processing for the collection of data for business purposes; data processing management; data processing services.

Class 38 Telecommunication services; telecommunication network services; digital network communication services; computer communication; video and audio streaming through the means of the internet; communication by online blogs; broadcasting and telecommunication services; broadcasting and transmission of television, radio, cable, satellite and internet programmes; internet broadcasting services; transmission of computerised data by means of a computer device; communications services for the electronic, digital and analogue display of information, messages, images and data; data streaming; data streaming services; streaming of audio material on the internet; streaming of video and audio material on the internet; streaming of television over the internet; telecommunication of information (including web pages), computer programs and any other data; transmission of messages, sound and images; transmission of sound and pictures; broadcasting services, namely, uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network; webcasting services; webcasting services; providing access to weblogs; providing digital program distribution of audio and video broadcasts over a global computer network; providing access to content, websites and portals; providing access to a video sharing portal for entertainment purposes; electronic transmission of streamed and downloadable audio and video files via electronic and communications networks as well as by means of a global computer network; video uploading services; video transmission over digital networks; providing of access to on-line chat rooms and bulletin boards; telecommunication of information including web pages, computer programs, text and any other data; transmission of messages, data and content via the Internet and other computer and communications networks; communication by online blogs; online forums, chat rooms and blogs for the transmission of messages, comments and multimedia content among users; providing on-line chat rooms for social networking; chat room services for social networking; providing access to digital music websites on the Internet or other computer network; delivery of digital music by telecommunications; web streaming being the transmission of data, information and audio-visual data via the Internet or other computer network; transmission of written and digital communications; operation of chat rooms; provision of on-line forums.

Class 41 Education services; publishing services; providing of training; providing of coaching; entertainment services; arranging, conducting and provision of training courses relating to online networking; arranging, organising and conducting of conferences, workshops, seminars, conventions, fairs, symposia, events and exhibitions relating to online networking; arranging, organising and conducting of award ceremonies relating to lifestyle, career management and business; provision of entertainment via podcast; the provision of educational podcasts; entertainment, training via the Internet and other communications networks relating to lifestyle, career management and business; education and entertainment services provided by means of radio, television, telephony, the Internet and on-line databases relating to online networking; entertainment and educational services featuring electronic media, multimedia content, audio and video content, movies, pictures, photographs, graphics, images, text and related information provided via the internet and other communications networks relating to online networking; production of video recordings, sound recordings, DVDs, CDs, CD-ROMs, video and audio tapes relating to online networking; production of television and radio programmes relating to online networking; publication of magazines, books, texts and printed matter relating to online networking; publishing by electronic means; providing online electronic publications (not downloadable); provision of television programmes, radio programmes, films, audio and/or visual material and games online (not downloadable) relating to online networking; provision of news online relating to online networking; provision of cinematographic and video entertainment relating to online networking; production of sound and/or video recordings; recreation and training services; training and career services; mentoring services.

Class 42 Scientific and technological services and research and design relating thereto; industrial analysis, industrial research and industrial design services; quality control and authentication services; design and development of computer hardware and software; scientific and technological services, namely, providing an online networking platform website featuring non-downloadable software; design and development of computer hardware and software; design and development of computer hardware and software for collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing,

consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, projects; design and development of computer hardware and software for collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, in relation to online networking.

Class 45 Online social networking services; introduction and social networking services; online social networking accessible by means of downloadable mobile applications; social introduction agencies; personal introduction services; online and internet based social introduction, friendship, social networking services; social media and social networking services utilising sales and marketing plans and technologies; concierge services; personal concierge services for others; concierge services making requested personal arrangements and reservations and providing customer-specific information to meet individual needs; social networking services; licensing services; security services; advise, consultation and information services relating to the aforesaid services.

Class 9 of the contested application

Apparatus, instruments and devices for collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling,

dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, projects; apparatus, instruments and devices for collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, in relation to social networking

19. The above contested *apparatus, instruments and devices* cover a broad category of goods which are likely to be IT related for use in carrying out various actions in relation to data, information, analytics and graphics within the field of social networking. Likewise, the opponent's *computers* are programmable devices capable of carrying out various actions in relation to data, information, analytics and graphics. Accordingly, I find that the opponent's *computers* are included in the above contested broad terms and therefore the competing goods are considered identical in line with the principle set out in *Meric*.

Computer software; computer software for use in collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, in relation to social networking; computer software relating to database management software, downloadable databases, computer programs, mobile applications, computer software and internet platforms; computer software relating to social networking; downloadable mobile applications; downloadable mobile applications in relation to social networking

20. The above contested *software* and *applications* are all used to operate computers and execute specific tasks and therefore play an important role in the function of computers. Consequently, the above contested goods and the opponent's *computers* are dependent on one another for their operation. I therefore find them to be complementary. Furthermore, I am of the view that the goods can coincide in end users and producers. However, I acknowledge that the method of use and nature of the goods at issue are different, and that the places that the respective goods are purchased will sometimes differ on the basis that *computers* being tangible goods can be purchased in physical stores, whereas *applications* being intangible goods will be purchased by downloading them online. Accordingly, I find that the competing goods are similar to a medium degree.

Computer hardware

21. The contested *computer hardware* is a broad term referring to the physical components that make up a computer system. Computer hardware can be installed inside a computer, such as card readers and mother boards, or can be connected to the outside of a computer, such as a keyboard and mouse. The opponent's *computer input devices* are essentially *computer hardware* that transmits data to a computer, such as a mouse and keyboard. Accordingly, the opponent's *computer input devices* namely *multimedia computer keyboards, computer mice, point of sale keyboards including magnetic card readers, biometric security readers, smart card readers* are included in the above contested broad term and are therefore identical in line with the principle set out in *Meric*.

Computer hardware for use in collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining,

displaying, and processing data, information, analytics, graphics, projects in relation to social networking

22. The contested services relate to *computer hardware* that plays a specific role in the function and operation of computers. Accordingly, I find that the contested goods and the opponent's *computers* are dependent on one another for their operation. As such, I find them complementary. Furthermore, the goods can coincide in end users and producers. Accordingly, I find that the competing goods are similar to a medium degree.

Downloadable electronic publications; downloadable publications relating to social networking; downloadable and electronic publications; downloadable and electronic publications in the nature of manuals in relation to social networking

23. The contested *downloadable and electronic publications* are electronic versions of traditional media such as e-books, electronic journals, online magazines and newspapers, etc. Electronic publications are distributed to consumers through computers, tablet reading devices and smartphones, etc. In contrast, the opponent's goods are *switches; sensors; computers and computer input devices*. I find that the competing goods differ in their nature, method of use, intended purpose and trade channels. In addition, the goods will not be in competition, nor will they be complementary. Accordingly, these goods share no obvious similarity. While it is acknowledged that the contested goods can be downloaded and read via *computers*, I am of the view that this factor alone is insufficient to base a finding of similarity on. Accordingly, the above contested goods and all the opponent's goods are dissimilar.

Class 35 of the contested application (as listed above)

24. Broadly speaking, the contested Class 35 services are business services concerning various activities associated with running a company, or running part of a company's operational activities, along with secretarial and administrative support services. The contested services are generally rendered by specialist companies with the aim of improving the customer's business. The fact that these services may

involve an IT component is not enough to consider these services similar to the opponent's goods in Class 9. These services do not have the same nature, intended purpose or methods of use as the opponent's goods in Class 9, and will target different consumers via different commercial channels and will be produced or provided by different undertakings. Furthermore, they are neither in competition, nor are they complementary. Accordingly, absent any submissions from the opponent or an indication as to where the similarity lies, I find that the contested services are dissimilar to all the opponent's Class 9 goods.

Class 38 of the contested application

Computer communication; communication by online blogs; communications services for the electronic, digital and analogue display of information, messages, images and data; telecommunication of information (including web pages), computer programs and any other data; telecommunication of information including web pages, computer programs, text and any other data; communication by online blogs; delivery of digital music by telecommunications

25. The above contested *telecommunication and communication services* directly relate to various computer communications and programmes, etc. The opponent's *computers* being programmable electronic machines can also be used for communication purposes, for example, sending and receiving electronic messages (email). Accordingly, I find that a link exists between these conflicting goods and services based on their complementary character, and although their nature is different, their purpose and distribution channels can overlap. Therefore, I find that the goods and services at issue are similar to a medium degree.

Telecommunication services; Telecommunication network services; digital network communication services

26. Broadly speaking, the contested *telecommunication and communication services* involve the transmission of information by various types of technologies over wire, radio, optical, or other electromagnetic systems, enabling consumers to

communicate with one another, by means of, for example, a telephone. The opponent's *computers* also enable consumers to communicate with one another by, for example, electronic means, from one computer user to one or more recipients via a network (email). Accordingly, although the goods and services have a different nature, there could be an overlap in their purpose, and can coincide in end users, and as such I find that they are similar to a low degree.

Video and audio streaming through the means of the internet; transmission of computerised data by means of a computer device; data streaming; data streaming services; streaming of audio material on the internet; streaming of video and audio material on the internet; streaming of television over the internet; electronic transmission of streamed and downloadable audio and video files via electronic and communications networks as well as by means of a global computer network; transmission of messages, data and content via the Internet and other computer and communications networks; web streaming being the transmission of data, information and audio-visual data via the Internet or other computer network;

27. The contested services relate to various *transmission* and *streaming* services that take place over a computer network. Accordingly, in terms of these services consumers will likely use *computers* to transmit and stream data, etc. As such, I find that a link exists between the opponent's *computers* and the contested services based on their complementary character. While their nature is different since goods are tangible and services are intangible, there could be an overlap in their purpose, and can coincide in end users. Therefore, I find the goods and services at issue are similar to a medium degree.

Transmission of messages, sound and images; transmission of sound and pictures; video transmission over digital networks; video uploading services; transmission of written and digital communications

28. The contested services relate to various *transmission* services that can take place via a computer network, radio or television, allowing consumers to communicate with one another by remote means, for example, through electrical signals or electromagnetic waves, and providing access to telecommunication

networks such as telephone lines or the Internet. Therefore, in terms of these services, where the *transmission* services take place via computer networks and the internet, consumers will likely use the opponent's *computers* to access the services, although the same cannot be said for *transmission* services that take place via radio and television. Accordingly, although the goods and services have a different nature, there could be an overlap in their purpose, and can coincide in end users. As such, I find that they are similar to a low degree.

Broadcasting; broadcasting and transmission of television, radio, cable and satellite programmes

29. In general, the various contested *broadcasting* services involve the communication of audio or video information over a distance by means of radio waves, optical signals, computers and computer networks. Therefore, in terms of these services, where the *broadcasting* services take place via computer networks and the internet, I find that a link exists between these services and the opponent's *computers*, although the same cannot be said for *broadcasting* services that take place via radio waves and optical signals. Accordingly, although the goods and services have a different nature, they can overlap in purpose and can coincide in end users. Therefore, I find that they are similar to a low degree.

Broadcasting and transmission of internet programmes; internet broadcasting services; broadcasting services, namely, uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network; webcasting services; providing digital program distribution of audio and video broadcasts over a global computer network

30. The above services relate to various *broadcasting* and *webcasting* services that take place over a computer network. Accordingly, in terms of these services consumers will likely use *computers* to access and use the services. As such, I find that a link exists between the opponent's *computers* and the above contested services based on their complementary character. While their nature is different since goods are tangible and services are intangible, there could be an overlap in

their purpose, and they can coincide in end users. Therefore, I find the goods and services at issue to be similar to a medium degree.

Providing access to weblogs; providing access to content, websites and portals; providing access to a video sharing portal for entertainment purposes; providing of access to on-line chat rooms and bulletin boards; providing access to digital music websites on the Internet or other computer network; operation of chat rooms; provision of on-line forums; online forums, chat rooms and blogs for the transmission of messages, comments and multimedia content among users; providing on-line chat rooms for social networking; chat room services for social networking

31. The above contested services are types of *communication services* which allow users to communicate with one another, via remote means. The opponent's *computers* are essential to such services on the basis that consumers will use *computers* in order to access the above contested services: they are complementary. Although these goods and services have a different nature, they have shared purposes and coincide in distribution channels and users, accordingly, I find that a link exists. Therefore, I find that the goods and services at issue are similar to a medium degree.

Class 41 of the contested application (as listed above)

32. The contested Class 41 services relate to inter alia, *education, training and entertainment*, these services share no obvious similarity with the opponent's Class 9 goods. The fact that these services may involve an IT component is not enough to consider these services similar to the opponent's goods in Class 9. These services do not have the same nature, intended purpose or methods of use as the opponent's goods in Class 9, and will target different consumers via different trade channels and will be produced or provided by different undertakings. Furthermore, they are neither in competition, nor are they complementary. Their natures, purposes and methods of use are different. They do not coincide in their producers or providers and do not share the same distribution channels and target different end users. Accordingly, absent any submissions from the opponent or an indication as to where the similarity

lies, I find that the contested services are dissimilar to all the opponent's Class 9 goods.

Class 42 of the contested application

Design and development of computer hardware and software; design and development of computer hardware and software for collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, projects; design and development of computer hardware and software for collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, in relation to online networking

33. The above contested *design and development of computer hardware and software* services share some similarities with the opponent's *computers* and *computer input devices*. The goods and services at issue are likely to coincide in terms of producers and consumers. Furthermore, these goods and services are complementary since one could not exist without the other. However, I acknowledge that the services and the opponent's goods differ in nature because goods are tangible items, whereas services are intangible. Furthermore, I find that the purpose and method of use differs. However, the contested services are closely linked to the opponent's *computers* and *computer input devices* in Class 9 on the basis that manufacturers of computers and/or software will also commonly provide computer

and/or software-related services, as a means of keeping the system updated, for example. Accordingly, I find there to be a medium degree of similarity between the above contested services and opponent's *computers* and *computer input devices* in Class 9.

Scientific and technological services and research and design relating thereto; scientific and technological services, namely, providing an online networking platform website featuring non-downloadable software

34. The above contested services are broad terms which could include information technology services. As such, there will be an overlap of user and trade channels on the basis that businesses that provide information technology services may also provide the corresponding computers and computer hardware input devices. For example, businesses that provide computers and computer hardware often also provide related services such as development and maintenance of those goods. That said, the nature and purpose of these goods and services differ and consequently they will not be in competition with each other. However, I find that there is complementarity between the goods and services. Accordingly, I find that the goods and services at issue are similar to at least a low degree.

industrial analysis, industrial research and industrial design services; quality control and authentication services

35. The above contested services are specialist services which have nothing in common with the opponent's Class 9 goods. The nature, purpose and methods of use of these services are obviously different from those of the opponent's goods. Furthermore, they do not coincide in producers or providers and do not share the same distribution channels. Moreover, they are neither complementary nor in competition. Accordingly, I find that the contested services are dissimilar to all the opponent's Class 9 goods.

Class 45 of the contested application

Online social networking services; introduction and social networking services; online social networking accessible by means of downloadable mobile applications; social introduction agencies; personal introduction services; online and internet based social introduction, friendship, social networking services; social media and social networking services utilising sales and marketing plans and technologies; social networking services; advise, consultation and information services relating to the aforesaid services

36. The contested services allow users to create, post, comment on and read from their own interest-specific forums, often within the realm of virtual communities through computer communication. Accordingly, the services have a certain connection with the opponent's *computers* in Class 9 on the basis that there is a complementary relationship between these goods and the contested services because the opponent's *computers* are essential for the provision of the services. Consequently, I find that the contested services are similar to a low degree to the opponent's services in Class 9.

Concierge services; personal concierge services for others; concierge services making requested personal arrangements and reservations and providing customer-specific information to meet individual needs; advise, consultation and information services relating to the aforesaid services

37. Broadly speaking the contested services are personalised services provided by an individual or company specialising in personal assistance or other assistance services such as lifestyle management, transportation, planning and reservation services, etc. The nature, purpose and methods of use of these services are obviously different from those of the opponent's goods. Furthermore, they do not coincide in producers or providers and do not share the same distribution channels. Moreover, they are neither complementary nor in competition. Accordingly, I find that the contested services are dissimilar to all the opponent's Class 9 goods.

Licensing services; advise, consultation and information services relating to the aforesaid services

38. In general, the contested services are a type of legal service that provides the permission to do or use something through licenses. I find that these services do not have any points of contact with the opponent's goods. They differ in their nature and purpose, and also in their distribution channels, producers and providers, and method of use. They are neither in competition nor complementary. Accordingly, I find that the contested services are dissimilar to all the opponent's Class 9 goods.

Security services; advise, consultation and information services relating to the aforesaid services

39. The contested *security services* provide protection against some form of attack. These services have nothing in common with the opponent's goods in Class 9. They are directed at different consumers, they originate from different companies and do not share the same distribution channels. Accordingly, as these goods and services are neither complementary nor in competition with each other and have different purposes, they are considered to be dissimilar.

The average consumer and the nature of the purchasing act

40. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

41. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well

informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

42. The average consumer of the goods and services at issue is likely to include members of the general public as well as business and professional users. The goods and services will mainly be available via retailers, being both general retailers and more specialist ones, and their online or catalogue equivalents. At the retailers’ physical premises, the goods will be displayed on shelves and in cabinets and the services will be displayed on signs and placards, both being self-selected by the consumer. A similar process will apply when the goods and services are selected online or via catalogues, in that a consumer will select them after seeing an image, on, for example, a webpage or in a catalogue. In my view, the visual component will dominate all methods of sale, although I do not discount an aural component playing a part given that orders may be placed by telephone or that word-of-mouth recommendations and advice may be received from sales assistants. Given the wide-ranging goods and services at issue, the price and frequency of purchase will vary depending on their nature and type. In this regard, when selecting the goods and services at issue, the average consumer is likely to pay at least a medium degree of attention.

Comparison of the marks

44. It is clear from *Sabel BV v. Puma AG* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM*, that:

“34. [...] it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is

sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

45. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the trade marks.

46. The trade marks to be compared are as follows:

Opponent’s mark	Applicant’s mark
CHERRY	HELLOCHERRY

47. In its counterstatement, with regard to the similarity of the marks, the applicant stated the following:

“It is submitted that the signs in issue are dissimilar (or, in the alternative, similar to only a low degree) owing to the fact that the Sign contains the additional word “HELLO”, which has no counterpart in the Earlier Mark.”

48. With regard to the similarity of the marks the opponent states the following:³

“The marks share the identical word CHERRY. The dominant and distinctive component of the marks is CHERRY. The Applicant’s mark has the additional word HELLO at the beginning of the word but this will be immediately perceived by the average consumer as non-distinctive, and as simply placing additional emphasis/focus upon the dominant and distinctive element CHERRY.

³ Statement of grounds.

The average consumer will immediately perceive HELLOCHERRY as being similar to CHERRY, the consumer will believe that HELLOCHERRY is the Opponent's brand or that it originates from the Opponent's business. The marks are visually, phonetically/aurally, and conceptually highly similar."

Overall impression

49. The applicant's mark consists of the words 'HELLO' and 'CHERRY', presented as a single word, in plain capital letters with no additional stylisation. Due to the wording contained in the mark it is likely to be perceived as the two words, 'HELLO' and 'CHERRY' conjoined. The overall impression of the mark resides in the words themselves, with neither word dominating.

50. The opponent's mark is 'CHERRY' presented in capital letters with no additional stylisation. There are no other elements that contribute to the overall impression of the mark which lies in the word itself.

Visual comparison

51. Visually, the marks coincide insofar as they share the same six letter word, 'CHERRY'. The marks differ in the presence of the word 'HELLO' that sits at the beginning of the applicant's mark. This element contributes as a point of visual difference between the marks. I am of the view that the marks are visually similar to a medium degree.

Aural comparison

52. The applicant's mark consists of four syllables, namely 'HEL-LO-CHER-RY'. The opponent's mark consists of two syllables, namely 'CHER-RY'. Aurally, the entirety of the opponent's mark is the same as the applicant's last two syllables with the only difference coming in the presence of the first two syllables in the applicant's mark. Taking this into account whilst bearing in mind the overall impression of the marks, I find that the marks are aurally similar to a medium degree.

Conceptual comparison

53. The opponent's mark, consisting solely of the word 'CHERRY', will be widely understood as a reference to the fruit of the cherry tree. This has no obvious connection to the goods in the opponent's specification. As for the applicant's mark, the same meaning will be applied to its own 'CHERRY' element which, again, will have no obvious connection to the applied for goods and services. The addition of the word 'HELLO' at the beginning of the applicant's mark will be understood as a normal greeting used when meeting somebody, etc. When viewed as a whole, I consider that applicant's mark will convey the concept of a greeting to cherry, this concept has no counterpart in the opponent's mark. However, given that the 'HELLO' greeting serves no real purpose within the mark, I find that this element will only contribute as a slight point of conceptual difference between the marks. Taking all of this into account, I am of the view that the marks are conceptually similar to a medium degree.

Distinctive character of the earlier trade mark

54. The distinctive character of a trade mark can be measured only, first, by reference to the goods or services in respect of which registration is sought and, second, by reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not

contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

55. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

56. In their submissions, the opponent states that their mark has enhanced distinctiveness due to the use made of the mark in the UK for the Class 9 goods at issue. However, the opponent has not provided any evidence of this. Consequently, I have only the inherent position to consider.

57. The earlier mark comprises the word ‘CHERRY’. As previously mentioned, the word will be immediately understood as a reference to the fruit of the cherry tree but will have no obvious connection to the goods for which the opponent’s mark is registered. On this basis, I agree with the opponent’s viewpoint that in terms of the goods at issue, their mark is inherently distinctive to a high degree.

Likelihood of confusion

58. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. One such factor is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services, and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier trade mark, the average consumer for the goods and services and the

nature of the purchasing process. In doing so, I must be mindful to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

59. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and goods down to the responsible undertakings being the same or related.

60. With regard to the likelihood of confusion the opponent states the following:⁴

“The marks CHERRY and HELLOCHERRY are highly similar on all three of the standard tests for similarity, namely, visual, aural and conceptual similarity. The goods and services of this dispute are identical, for example hardware/computer hardware etc, or in the alternative the goods/services are similar.

The average consumer rarely has the opportunity to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has retained in his mind. In this case the average consumer will see the CHERRY and HELLOCHERRY marks and will either imperfectly recall the Applicant’s mark as being the Opponent’s mark, or the average consumer may notice that there are differences between the marks but will also see the common element CHERRY and conclude that the Applicant’s mark is connected to or is another brand of the owner of the Opponent’s mark. It is also entirely possible in this case for there to be direct confusion. The word HELLO is not distinctive and because it prefixes CHERRY it is likely to be perceived as simply referring to and emphasising the distinctive mark CHERRY.”

⁴ Statement of grounds.

61. Earlier in the decision I concluded that the marks are visually, aurally and conceptually similar to a medium degree. I have found that the earlier mark has a high degree of inherent distinctive character for the goods at issue. Furthermore, I found the similarity between the goods and services at issue to range from dissimilar to identical. I have found that average consumers of the goods and services will include members of the general public and businesses or professional users. I have found that the average consumers will pay at least a medium degree of attention when selecting the goods or services. I have found that the purchasing process will be largely visual, however, I have not discounted aural considerations.

62. I acknowledge that the word 'CHERRY' is identically present in the competing marks. Nevertheless, the contested mark also contains the word 'HELLO', this word having no counterpart in the earlier mark. I am of the view that this additional element would not be overlooked or disregarded by consumers upon a visual inspection of the marks, which is of heightened importance given that I have found the purchasing process to be predominantly visual in nature. Indeed, visually, the additional word in the contested mark renders the mark almost double the length of the earlier mark. The impact of this is that when perceiving the respective marks in a retail store, online store or in a catalogue, etc., it is unlikely that consumers will mistake them for each other. Moreover, even in circumstances where the goods and services are purchased aurally, for example, over the telephone, it is unlikely that consumers would mistake the marks for one another when hearing them uttered aloud or making orders verbally. Accordingly, taking all these factors into account, even for consumers paying a medium degree of attention, they still would not misremember the additional element and directly mistake one mark for the other. Therefore, even when factoring in the principles of imperfect recollection and interdependency, I do not consider there to be a likelihood of direct confusion.

63. Having found no likelihood of direct confusion, I now go on to consider indirect confusion.

64. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.”

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

65. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation

prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

66. It is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17. This is mere association not indirect confusion. I acknowledge that a finding of indirect confusion should not be made merely because the two marks share a common element.

67. The degree of similarity between the marks arises from the presence of the word ‘CHERRY’. The marks differ in the presence of the word ‘HELLO’ that sits at the beginning of the applicant’s mark. While the applicant’s mark comprises the words ‘HELLO’ and ‘CHERRY’ presented as a single word, I am of the view that they will be perceived separately. Consumers will recognise that there is a difference between the competing marks, however, they will also recognise the common element ‘CHERRY’, whether consciously or unconsciously, this will lead consumers through the mental process described above, namely, that there is a difference between the marks, but there is also something in common.

68. Taking into account the relevant goods and services, the visual, aural and conceptual similarities created by the word ‘CHERRY’, and given that the word ‘CHERRY’ is highly distinctive in relation to the relevant goods and services, I find that these factors will have a significant impact on consumers who are likely to assume that only one undertaking would use the word ‘CHERRY’ in their mark in respect of the goods and services at issue. Accordingly, this will lead to indirect confusion on the part of the average consumer, who will believe the marks to be brand variants of each other and originating from the same or related undertaking. I find this to be the case for all the goods and services for which I have found similarity, even to a low degree. It is my view that consumers may consider the addition of the common greeting ‘HELLO’, in the contested mark to be an inventive way of marketing the ‘CHERRY’ brand, by simply adding a friendly ‘hello’ greeting to it.

Conclusion

69. The opposition under section 5(2)(b) is partially successful in respect of the following goods and services, for which the application is refused:

Class 9 Apparatus, instruments and devices for collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, projects; apparatus, instruments and devices for collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, in relation to social networking; Computer software; computer software for use in collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, in relation to social networking; computer software relating to database management software, downloadable databases, computer programs, mobile applications, computer software and internet platforms; computer software relating to social networking; downloadable mobile applications; downloadable mobile applications in relation to social networking; Computer hardware; computer

hardware for use in collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, projects in relation to social networking;

Class 38 Telecommunication services; telecommunication network services; digital network communication services; computer communication; communication by online blogs; communications services for the electronic, digital and analogue display of information, messages, images and data; telecommunication of information (including web pages), computer programs and any other data; telecommunication of information including web pages, computer programs, text and any other data; communication by online blogs; delivery of digital music by telecommunications; Video and audio streaming through the means of the internet; transmission of computerised data by means of a computer device; data streaming; data streaming services; streaming of audio material on the internet; streaming of video and audio material on the internet; streaming of television over the internet; transmission of messages, sound and images; transmission of sound and pictures; electronic transmission of streamed and downloadable audio and video files via electronic and communications networks as well as by means of a global computer network; video transmission over digital networks; video uploading services; transmission of messages, data and content via the Internet and other computer and communications networks; web streaming being the transmission of data, information and audio-visual data via the Internet or other computer network; transmission of written and digital communications; Broadcasting; broadcasting and transmission of television, radio, cable, satellite and internet programmes; internet broadcasting services; broadcasting services, namely, uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network; webcasting services; providing digital program distribution of audio and video broadcasts over a global computer network; Providing access to weblogs; providing access to content,

websites and portals; providing access to a video sharing portal for entertainment purposes; providing of access to on-line chat rooms and bulletin boards; providing access to digital music websites on the Internet or other computer network; operation of chat rooms; provision of on-line forums; online forums, chat rooms and blogs for the transmission of messages, comments and multimedia content among users; providing on-line chat rooms for social networking; chat room services for social networking.

Class 42 Design and development of computer hardware and software; design and development of computer hardware and software for collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, projects; design and development of computer hardware and software for collecting, compiling, storing, registering, creating, managing, summarising, sharing, supplying, transmitting, exchanging, reading, identifying, transcribing, organising, viewing, interpreting, cleansing, consolidating, engineering, calculating, projecting, forecasting, tracking, analysing, assessing, visualising, recording, describing, modelling, researching, transforming, supporting, generating, mapping, operating, controlling, scheduling, dispatching, planning, reporting, monitoring, systemising, settling, updating, maintaining, displaying, and processing data, information, analytics, graphics, in relation to online networking; Scientific and technological services and research and design relating thereto; scientific and technological services, namely, providing an online networking platform website featuring non-downloadable software.

Class 45 Online social networking services; introduction and social networking services; online social networking accessible by means of downloadable mobile applications; social introduction agencies; personal introduction services; online and internet based social introduction, friendship, social networking services; social

media and social networking services utilising sales and marketing plans and technologies; social networking services; advise, consultation and information services relating to the aforesaid services.

70. The application can proceed to registration in respect of the following goods and services for which the opposition has been unsuccessful:

Class 9 Downloadable electronic publications; downloadable publications relating to social networking; downloadable and electronic publications; downloadable and electronic publications in the nature of manuals in relation to social networking.

Class 35 Advertising, promotion, and marketing services; advertising in relation to social networking; providing business information; providing business information in the form of databases, files, property registers, product registers; providing business information in relation to the state of assets, sector; advisory services for business management; advisory services relating to business management and business operations; advisory services relating to business risk management; advisory services relating to commercial transactions; analysis of advertising response; analysis of advertising response and market research; analysis of business data; analysis of business information; analysis of business management systems; analysis of business statistics; analysis of business trends; analysis of company attitudes; analysis of company behaviour; analysis of market research data; analysis of market research data and statistics; analysis of market research statistics; analysis of marketing trends; analysis of markets; analysis of the public awareness of advertising; analysis relating to marketing; business analysis; business analysis and information services, and market research; business analysis of markets; business analysis services; business consultancy services; business consultancy services relating to data processing; business consultancy to individuals; business consultation services; business consulting services; business data analysis; business data analysis services; business efficiency expert services; business information; business information agency services; business information and inquiries; business information and research services; compilation of business

information; business information for enterprises; provision of business information for enterprises; provision of business information; business information services; business information services provided online from a computer database or internet; businesses information services provided on-line from a computer database or the internet; business information services provided online from a global computer network or the internet; business intelligence services; business management analysis; collating of data in computer databases; collecting business information; collecting business statistics; collecting information for business; collection of commercial information; collection of data; collection of information relating to advertising; collection of information relating to market analysis; collection of information relating to market research; collection of information relating to market studies; collection of market research information; collection of personnel information; collection of statistics for business; compilation of statistical information; compilation of statistical models for the provision of market dynamics information; compilation of statistics; compiling of information into computer databases; compiling of statistics; consultancy relating to business analysis; data collection [for others]; data collection services; data compilation for others; data file administration; data inputting services; data management; data management services; data processing; data processing for businesses; data processing for the collection of data for business purposes; data processing management; data processing services.

Class 41 Education services; publishing services; providing of training; providing of coaching; entertainment services; arranging, conducting and provision of training courses relating to online networking; arranging, organising and conducting of conferences, workshops, seminars, conventions, fairs, symposia, events and exhibitions relating to online networking; arranging, organising and conducting of award ceremonies relating to lifestyle, career management and business; provision of entertainment via podcast; the provision of educational podcasts; entertainment, training via the Internet and other communications networks relating to lifestyle, career management and business; education and entertainment services provided by means of radio, television, telephony, the Internet and on-line databases relating to online networking; entertainment and educational services featuring electronic

media, multimedia content, audio and video content, movies, pictures, photographs, graphics, images, text and related information provided via the internet and other communications networks relating to online networking; production of video recordings, sound recordings, DVDs, CDs, CD-ROMs, video and audio tapes relating to online networking; production of television and radio programmes relating to online networking; publication of magazines, books, texts and printed matter relating to online networking; publishing by electronic means; providing online electronic publications (not downloadable); provision of television programmes, radio programmes, films, audio and/or visual material and games online (not downloadable) relating to online networking; provision of news online relating to online networking; provision of cinematographic and video entertainment relating to online networking; production of sound and/or video recordings; recreation and training services; training and career services; mentoring services.

Class 42 industrial analysis, industrial research and industrial design services; quality control and authentication services.

Class 45 Concierge services; personal concierge services for others; concierge services making requested personal arrangements and reservations and providing customer-specific information to meet individual needs; advise, consultation and information services relating to the aforesaid services; Licensing services; advise, consultation and information services relating to the aforesaid services; security services; advise, consultation and information services relating to the aforesaid services.

Costs

71. On balance, I consider that both parties have achieved a relatively equal level of success in these proceedings. In the circumstances, I do not consider it appropriate to make a costs award in favour of either party. Therefore, I order both parties to bear their own costs in these proceedings.

Dated this 23rd day of September 2022

**Sam Congreve
For the Registrar**